



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: JUNE 09, 2023

IN THE MATTER OF:

Appeal Board No. 628999 A

PRESENT: MICHAEL T. GREASON, MEMBER

The Appeal Board, on its motion pursuant to Labor Law § 534, has reopened and reconsidered Appeal Board No. 627234, filed March 15, 2023, which reversed the decision of the Administrative Law Judge and overruled the initial determination disqualifying the claimant from receiving benefits, effective August 1, 2022, on the basis that the claimant refused an offer of suitable employment without good cause.

Upon consideration of the entire record, the Board makes the following

FINDINGS OF FACT: The claimant worked for a relative's landscaping company from February 2021 until July 9, 2022. For most of her employment, she worked 11 hours each week as a general worker and earned \$20 per hour. Her duties included managing the employer's social media accounts, cleaning, and assisting her cousin, BS, who is married to the owner of the business and runs the office, with various other tasks.

In May 2022, the claimant began to work at the employer's nursery for 24 hours each week, watering plants and selling flowers, at the same rate of pay. On July 9, the claimant advised BS that she was leaving her employment to work with a friend in real estate. The claimant did not work for the employer after that day. A week or so later, the claimant notified BS that her prospective job had fallen through and asked if she could return to work. BS replied that she had to speak with her husband about this request.

Because she had not yet heard back from BS, the claimant filed a claim for

benefits on July 22. On August 1, BS learned of the claim. She then sent a text to the claimant, in which she referenced the claim and told the claimant that she could resume her former duties. The claimant replied that she was confused since she had asked to return but had not heard back. The two then argued about how the claimant's employment had ended, with BS texting "...you flat out told me that your friend was offering you a job so I said OK I wasn't going to hold you back...[t]hen you told me that things didn't work out so I said OK I'll speak to [the owner]." The claimant replied "So how am I supposed to pay my bills while you speak to your husband and don't get back to me?" After next arguing about whether the claimant had looked for work since filing her claim, BS texted, "Well, I'm just saying that this is what I wanted to have a conversation about [sic] I'm sorry that things are turning for the worse because that's not my intention but I would like to offer your job back you can start tomorrow if you'd like." The claimant responded, "LOL. Be well. I'm beyond disappointed quite frankly." The claimant did not report back to work. She subsequently advised the Department of Labor that she had refused the offer because she did not like how the employer had treated her after her employment ended in July and therefore did not consider the offer to be genuine. The claimant does not dispute that the job offered was her former one in all respects.

OPINION: The evidence credible evidence establishes that the employer made a bona fide offer of suitable employment to the claimant on August 1, 2022. It is not controlling that it did not contain the specifics of salary, location and job duties. In *Matter of Behm* (196 AD3d 952 [Third Dept 2021]), the Court held that an offer to the claimant to return to his former position with the employer was a bona fide one, despite lacking a specific start date, location, salary and duties. The Court noted that the claimant considered the letter he received to be an offer to return to his former job "upon the same terms as he had left it" and refused it only because he was not interested in returning to it. We find the matter before us to be identical. The employer's text specifically advised the claimant that she could return to her former job on August 2, 2022. While the claimant contends that the offer was not a genuine one, she does not dispute that she understood it involved the same employment in all respects. Under these circumstances, the offer was bona fide. It is not controlling that the offer did not specify whether the claimant would resume the duties she performed most recently at the nursery for 24 hours each week, or her prior duties at the office for 11 hours each week, in light of *Matter of Gadd* (278 AD2d 1035 [Second Dept 1951]), where the Court held that a claimant did not have good cause to refuse an offer to work part-time because

he desired full-time work instead.

The claimant admits that she refused the offer because she did not want to work for the employer again, citing disappointment with how the employer allegedly treated her after her job initially ended by not getting back to her quickly after she asked to return to work in mid-July 2022 and inquiring about whether she was seeking work after filing her claim for benefits. As the foregoing is personal and non-compelling, the claimant has not established good cause for her refusal. We therefore conclude that she was properly disqualified from receiving benefits.

DECISION: The decision of the Appeal Board is rescinded. The decision of the Administrative Law Judge is affirmed.

The initial determination is sustained.

The claimant is denied benefits with respect to the issues decided herein.

MICHAEL T. GREASON, MEMBER